

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

J. KENNETH KEARNEY USA LTD.,

Plaintiff,

v.

DAVID SMITH,

Defendant.

Civil Action No. 04 CV 12643 RCL

DEFENDANT’S MOTION TO STAY LITIGATION

Defendant David Smith (“Smith”), by his attorneys Edwards & Angell, LLP, hereby moves this court to stay this litigation (the “Massachusetts Litigation”) pending: 1) the resolution of closely related litigation which has been pending in the United States District Court for the Southern District of Alabama for over one year (the “Alabama Litigation”); 2) submission of the parties to non-binding mediation in Mobile, Alabama pursuant to the terms of the Sales & Marketing Agreement between the parties if the resolution of the Alabama Litigation does not resolve the claims in the Massachusetts Litigation; and 3) transfer of the Massachusetts Litigation to the United States District Court for the Southern District of Alabama for all purposes if non-binding mediation in Alabama does not resolve the parties’ dispute.

In support of his Motion to Stay, Smith relies upon and incorporates by reference his memorandum of law in support of the Motion, which is filed herewith.

DAVID SMITH,

By his attorneys,

_s/ Windy L. Rosebush
Timothy P. Van Dyck
Windy L. Rosebush
Edwards & Angell, LLP
101 Federal Street
Boston, MA 02110
617-439-4444

LOCAL RULE 7.1 CERTIFICATION

On January 18 and 19, 2005, counsel for the Defendant conferred with counsel for the Plaintiff, in a good faith effort to resolve or narrow the issues presented by way of this motion. Despite good faith efforts, counsel were unable to resolve or narrow the issues presented in this motion.

_s/ Windy L. Rosebush
Windy L. Rosebush

CERTIFICATE OF SERVICE

I, Windy L. Rosebush, hereby certify that on this 19th day of January, 2005, I caused a copy of the foregoing document to be served upon William A. Zucker, Esq. and Kristin M. Cataldo, Esq. of Gadsby Hannah LLP, 225 Franklin Street, 21st Floor, Boston, MA 02110 by filing the same electronically.

_s/ Windy L. Rosebush
Windy L. Rosebush